



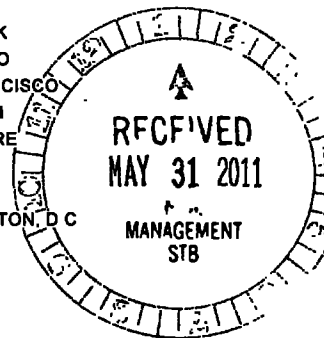
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May 31, 2011

By Hand Delivery

Rachel D. Campbell
Director
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: STB Docket No. 42125, E. I. du Pont de Nemours & Co. v. Norfolk Southern Railway Co.

Dear Ms. Campbell:

229662

Enclosed for filing in the above-referenced matter, please find Norfolk Southern Railway Company's Answer to the First Amended Complaint of E.I. du Pont de Nemours & Company. Should you have any questions, please contact the undersigned.

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Yours sincerely,

Matthew J. Warren
Counsel

MJW:lpj

cc: Jeffrey O. Moreno

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



E.I. DUPONT DE NEMOURS AND COMPANY

Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY

Defendant.

Docket No. NOR 42125

ANSWER TO FIRST AMENDED COMPLAINT

Pursuant to 49 C.F.R. § 1111.4 and other applicable law and authority, Defendant Norfolk Southern Railway Company ("NS") respectfully submits this Answer to the First Amended Complaint filed by Complainant E.I. du Pont de Nemours and Company ("DuPont") in STB Docket No. 42125 on May 11, 2011 ("Amended Complaint").

While DuPont states that its Amended Complaint is "materially the same" as the Complaint DuPont filed on October 7, 2010 ("Initial Complaint"), NS notes that the Amended Complaint differs in several significant respects from the Initial Complaint. The Amended Complaint adds new challenges to NS's rates for twenty-one movements not included in the Initial Complaint. The new Amended Complaint also withdraws challenges to NS's rates for seven movements included in the Initial Complaint, without any explanation for the reasons they were included in the original Complaint but now have been dropped. Nonetheless, in order to avoid unnecessary delay in these proceedings, NS does not object to DuPont's amendment of its Initial Complaint. However, NS reserves its right to object to any future amendment(s) if, for

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example, such amendment would prejudice the parties' ability to complete discovery in a timely fashion, or otherwise threaten the schedule prescribed by the Board.

NS denies all of the allegations of the Amended Complaint except where this Answer specifically states otherwise.

In response to the unnumbered paragraph on page 1 of the Amended Complaint, NS denies that DuPont has paid or will pay common carrier rates in excess of reasonable maximum levels for NS's transportation of the movements set forth in the Amended Complaint, denies that the Board has jurisdiction over all the issue movements, denies that DuPont has joined all necessary parties to this litigation, and denies that DuPont is entitled to any of the relief it seeks in this proceeding. The remainder of the unnumbered paragraph consists of a characterization of DuPont's Amended Complaint, to which no response is required. To the extent that any such response is required, NS denies the remaining allegations of this paragraph.

With respect to the numbered paragraphs of the Amended Complaint, NS responds as follows:

1. NS lacks sufficient information to admit or deny the allegations of Paragraph 1 of the Amended Complaint. To the extent a response is required, NS denies the allegations of Paragraph 1.

2. NS admits the first two sentences of Paragraph 2 of the Amended Complaint. With respect to the third sentence of Paragraph 2, NS admits that it is generally subject to the Interstate Commerce Commission Termination Act of 1995, and that some of its rates and practices are subject to the jurisdiction of the Board.

3. Paragraph 3 of the Amended Complaint consists of a characterization of DuPont's Complaint, to which no response is required. To the extent a response is required, NS

admits that the Amended Complaint purports to challenge NS's rates for certain origin-destination pairs set forth in the Exhibits to the Amended Complaint. NS denies that the Amended Complaint accurately states NS's common carrier rates for all of the challenged movements and denies that the Board has jurisdiction to consider the reasonableness of NS's rates for all the challenged movements. To the extent a further response is required, NS denies the remaining allegations of Paragraph 3.

4. With respect to the allegations of Paragraph 4 of the Amended Complaint, NS denies that it "transports" commodities for DuPont between all the points identified in Exhibit A, in part because several of the traffic lanes named in the Amended Complaint have moved no traffic in recent years. NS admits that it transports the identified commodities for DuPont between some of the origins and destinations named in Exhibit A. To the extent a further response is required, NS denies the allegations of Paragraph 4.

5. With respect to the allegations of Paragraph 5 of the Amended Complaint, NS denies that it "transports" commodities for DuPont between all the points identified in Exhibit B, in part because several of the traffic lanes named in the complaint have moved no traffic in recent years. NS admits that it transports the identified commodities for DuPont between some of the origins and destinations named in Exhibit B. To the extent a further response is required, NS denies the allegations of Paragraph 5.

6. With respect to the allegations in the first sentence of Paragraph 6 of the Amended Complaint, NS admits that prior to June 1, 2009 it transported the identified commodities for DuPont between some of the origins and destinations named in Exhibit A and Part 1 of Exhibit B. NS denies that it transported commodities for DuPont between all the points identified in Exhibit A and Part 1 of Exhibit B. With respect to the second sentence of Paragraph

6 of the Amended Complaint, NS admits that common carrier tariff rates consolidated at NSRQ 64869 and 65720 became applicable upon expiration of the Master Contract.

7. With respect to the allegations in the first sentence of Paragraph 7 of the Amended Complaint, NS admits that prior to June 15, 2010 it transported the identified commodities for DuPont between some of the origins and destinations named in Exhibit A and Part 2 of Exhibit B. NS denies that it transported commodities for DuPont between all the points identified in Exhibit A and Part 2 of Exhibit B. With respect to the second sentence of Paragraph 7 of the Amended Complaint, NS admits that common carrier tariff rates consolidated at NSRQ 65718, 65720, and 70022 became applicable upon expiration of the Master Contract.

8. With respect to the allegations in Paragraph 8 of the Amended Complaint, NS admits that it established common carrier rates in NSRQ 65720 for all the movements in Part 3 of Exhibit B except for Lane 125. The rate challenged for Lane 125 is an NS mileage scale rate that has not been used to transport any traffic for that lane. None of the rates DuPont lists in Part 3 of Exhibit B arise from NSRQ 70022.

9. With respect to the allegations of Paragraph 9 of the Amended Complaint, NS denies that the Amended Complaint accurately states NS's common carrier rates for all of the challenged movements. Furthermore, at this early stage of this case, NS lacks sufficient information to admit or deny DuPont's allegations regarding R/VC ratios. To the extent a further response is required, NS denies the remaining allegations of Paragraph 9.

10. Paragraph 10 of the Amended Complaint consists of a characterization of DuPont's Amended Complaint, to which no response is required. To the extent a response is required, NS admits that the Amended Complaint purports to challenge NS's rates for certain origin-destination pairs set forth in the Exhibits to the Amended Complaint. NS denies that the

Amended Complaint accurately states NS's common carrier rates for all of the challenged movements and denies that the Board has jurisdiction to consider the reasonableness of NS's rates for all the challenged movements. To the extent a further response is required, NS denies the remaining allegations of Paragraph 10.

11. Paragraph 11 states a legal conclusion to which no response is required. To the extent a response is required, NS denies Paragraph 11.

12. Paragraph 12 states a legal conclusion to which no response is required. To the extent a response is required, NS states that at this early stage of this case, NS lacks sufficient information to admit or deny DuPont's allegations regarding R/VC ratios. To the extent a further response is required, NS denies Paragraph 12.

13. Paragraph 13 states a legal conclusion to which no response is required. To the extent a response is required, NS denies that it is the only rail carrier that provides service at either the origin or destination for all the challenged movements and denies that there is a lack of effective competition from non-rail modes for all the challenged movements.

14. Paragraph 14 states a legal conclusion to which no response is required. To the extent a response is necessary, NS denies Paragraph 14.

15. Paragraph 15 states a legal conclusion to which no response is required. To the extent a response is necessary, NS denies Paragraph 15.

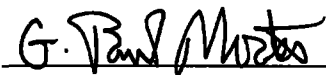
16. Paragraph 16 states a legal conclusion to which no response is required. To the extent a response is necessary, NS denies Paragraph 16.

17. Paragraph 17 states a legal conclusion to which no response is required. To the extent that a response is necessary, NS denies Paragraph 17.

The unnumbered final paragraph of the Amended Complaint (on pages 5 and 6) states legal conclusions and requests for relief to which no response is required. To the extent a response is deemed necessary, NS denies the allegations, conclusions, and requests for relief in that final paragraph, including clauses numbered 1 through 6, and denies that DuPont is entitled to any of the relief it seeks in this proceeding, or to any other relief.

Respectfully submitted,

John M. Scheib
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Counsel to Norfolk Southern Railway Company

Dated: May 31, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of May, 2011, I caused a copy of the foregoing Answer of Norfolk Southern Railway Company to the First Amended Complaint of E.I. du Pont de Nemours and Company to be served on the following parties by first class mail, postage prepaid or more expeditious method of delivery:

Jeffrey O. Moreno
Sandra L. Brown
Jason Tutrone
Thompson Hine LLP
1920 N Street, NW, Suite 800
Washington, DC 20036

A handwritten signature in black ink, appearing to read 'Eva Mozena Brandon', written over a horizontal line.

Eva Mozena Brandon